Supreme Court, U.S.
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# In the Supreme Court of the United States

RODERICK MCNEAL,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

On Petition For Writ Of Certiorari To The United States Court of Appeals for the Sixth Circuit

## PETITION FOR WRIT OF CERTIORARI

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## QUESTIONS PRESENTED

1. Section 924(c)(1)(C) of Title 18 of the United States Code calls for a mandatory minimum sentence of 25 years in the event of a "second or subsequent" 924(c) conviction. The question presented is whether this sentence enhancement is triggered when all 924(c) convictions are entered simultaneously by the district court.

2. This Court in *Deal v. United States*, 508 U.S. 129 (1993), noted that the words "second" and "subsequent" as found in section 924(c)(1)(C) were ambiguous but did not invoke the rule of lenity based upon Its definition of "conviction" and Its observation that findings of guilt are entered successively in time. *Id.* at 133 n. 1. The second question presented is whether the rule of lenity should be applied to 924(c) based upon the aforementioned ambiguity when the applicable convictions are entered simultaneously.

## TABLE OF CONTENTS

**Page**

QUESTIONS PRESENTED ..... i

TABLE OF AUTHORITIES ..... iv

PETITION FOR WRIT OF CERTIORARI ..... 1

OPINIONS BELOW ..... 1

JURISDICTION ..... 1

STATUTORY PROVISION INVOLVED ..... 1

STATEMENT ..... 2

REASONS FOR GRANTING THE WRIT ..... 6

I. The Sixth Circuit's Decision Conflicts with the Third Circuit's Holding that *Deal* Does Not Control When all § 924(c) Convictions are Entered Simultaneously ..... 7

II. Both Circuit Courts' Holdings Conflict with *Deal*'s Finding that § 924(c) Requires a Conviction After the First Conviction ..... 9

## TABLE OF CONTENTS
## (continued)

III. This Court Should Determine Whether the Rule of Lenity Applies to § 924(c) Based Upon the Ambiguity Identified in *Deal* When the Applicable Convictions are Entered Simultaneously ..... 11

CONCLUSION ..... 15

APPENDIX

Court of Appeals Opinion (Feb. 4, 2010).....1a

## TABLE OF AUTHORITIES

**Page**

CASES

*Castillo v. United States*,
530 U.S. 120 (2000) ..... 13

*Deal v. United States*,
508 U.S. 129 (1993) ..... passim

*Staples v. United States*,
511 U.S. 600 (1994) ..... 15

*United States v. Andrews*,
75 F. 3d 552 (9th Cir. 1996) ..... 11

*United States v. Couch*,
291 F.3d 251 (3d Cir.2002) ..... 6, 7, 8, 13

*United States v. Deal*,
954 F.2d 262 (5th Cir. 1992) ..... 10, 12

*United States v. Fontanilla*,
849 F.2d 1257 (9th Cir. 1988) ..... 11

*United States v. McNeal*,
No. 08-6388, 2010 WL 395910
(6th Cir. Feb 4, 2010) ..... 1

STATUTES

18 U.S.C. § 922(g) ..... 2, 3, 4

18 U.S.C. § 924(c) ..... passim

18 U.S.C. § 924(c)(1) ..... 10

18 U.S.C. § 924(c)(1) (pre-1998 amendment) ..... 14

18 U.S.C. § 924(c)(1)(C) ..... i, 1, 6, 7, 8

18 U.S.C. § 1951 ..... 2

18 U.S.C. § 3553 ..... 4

28 U.S.C. § 1254(1) ..... 1

OTHER AUTHORITIES

Petition for a Writ of Certiorari, *United States v. O'Brien*, No. 08-1569 (filed June 23, 2009) ..... 14

## PETITION FOR WRIT OF CERTIORARI

Roderick McNeal respectfully petitions for a writ of certiorari to review the judgment of the U.S. Court of Appeals for the Sixth Circuit.

## OPINIONS BELOW

The opinion of the U.S. Court of Appeals for the Sixth Circuit is reported at No. 08-6388, 2010 WL 395910 and is reproduced in the Appendix herein at 1a-10a. A petition for rehearing was not filed.

## JURISDICTION

The opinion of the U.S. Court of Appeals for the Sixth Circuit was issued on February 4, 2010. Pet. App. 1a. This Court's jurisdiction is invoked under 28 U.S.C. 1254(1).

## STATUTORY PROVISION INVOLVED

The statutory provision involved is 18 U.S.C.924(c)(1)(C). It contains the following:

> (C) In the case of a second or subsequent conviction under this subsection, the person shall --
>
> (i) be sentenced to a term of imprisonment of not less than 25 years; and

> (ii) if the firearm involved is a machinegun or a destructive device, or is equipped with a firearm silencer or firearm muffler, be sentenced to imprisonment for life.

## STATEMENT OF THE CASE

Factual Background:

The indictment claims that the petitioner, Roderick McNeal, engaged in fourteen robberies from October 21, 2006 until his arrest on November 15, 2006. Mr. McNeal allegedly targeted businesses in Memphis, Tennessee, and he used a firearm during these robberies. This alleged conduct resulted in a twenty-nine count indictment.

Plea Agreement and Change of Plea Hearing:

On April 8, 2008, the United States and the petitioner entered into a plea agreement in which Mr. McNeal was to plead guilty to twelve counts of 18 U.S.C. § 1951, twelve counts of 18 U.S.C. § 924(c) and one count of 18 U.S.C. § 922(g). The remaining counts (two counts of § 1951 and two counts § 924(c)) were to be dismissed at sentencing.

At the change of plea hearing, the District Court explained the charges and applicable rights to the petitioner. The government then explained the basis of fact for the charges. Finally, the Court

formally took the appellant's guilty pleas. The relevant part follows:

> Q. Now, I know we have left out a couple of them because the government is going to dismiss Counts 5, 6, 19 and 20, so I understand they're going to dismiss those. Now, as to these firearms charges, these are the carrying and use of a firearm in relation to each of these robberies, Counts 2, 4, 8, 10, 12, 14, 16, 18, 22, 24, 26 and 28, how do you plead to each of those counts, the firearms counts, do you wish to plead to each of those counts, the firearms counts, do you wish to plead guilty, or do you wish to plead not guilty, that's carrying and use of a firearm in connection with each of the robberies that you pled guilty to?
>
> A. Guilty.
>
> Q. Now, as to the 922(g) charge, which is the knowing possession of a firearm by you as a felon, that is the charge that you have a prior conviction and that you knowingly possessed a firearm, as to that charge, which is Count 29, do you wish to plead guilty or not guilty?
>
> A. Guilty.

> THE COURT: It is the finding of the court in the case of United States of America versus Roderick McNeal that the defendant is fully competent and capable of entering an informed plea, that the defendant is aware of the nature of the charges and the consequences of the plea and that the plea of guilty as to each of these charges is a knowing and voluntary plea supported by an independent basis in fact containing each of the essential elements of each of the offenses. Each plea of guilt is therefore accepted and the defendant is now adjudged guilty of each of these offenses.

Sentencing:

At the November 6, 2008 Sentencing Hearing, Mr. McNeal's total offense level was calculated to be 24 with a criminal history category of six. And the Guideline range was 100 to 125 months. The District Court considered the § 3553 factors and sentenced the defendant, as the government recommended, to:

> 1.) 100 months imprisonment on the Robbery Charges, Counts 1, 3, 7, 9, 11, 13, 15, 17, 21, 23, 25 and 27, concurrent with each other and all other counts;
>
> 2.) 100 months on Count 29, the violation of 18 U.S.C. § 922(g), concurrent with all other counts;

> 3.) 84 months (7 years) on the first numerical charge of 18 U.S.C. § 924(c), Count 2, which was run consecutive to all Counts;
>
> 4.) 300 months (25 years) on each of the remaining eleven counts of 18 U.S.C. § 924(c), Counts 4,8, 10, 12, 14, 16, 18, 22, 24, 26 and 28, with each Count running consecutive to all other Counts.

Mr. McNeal's total sentence of incarceration was 3,484 months (290 years and 4 months). The 924(c) charges accounted for 3,384 months (282 years) of the total sentence.

Appeal:

Mr. McNeal timely appealed his sentence contesting the district court's application of 18 U.S.C. § 924(c). The Sixth Circuit's review was de novo. Pet. App. 2a. Petitioner argued that his sentence did not comport with *Deal v. United States*, 508 U.S. 129 (1993) and that the rule of lenity should be applied, although the Sixth Circuit did not explicitly address the rule of lenity argument. The Sixth Circuit rejected these arguments and affirmed petitioner's sentence.

## REASONS FOR GRANTING THE WRIT

This appeal involves the application of 18 U.S.C. § 924(c)(1)(C). The Sixth Circuit found that *Deal* emphasized, "[F]indings of guilt on several counts are necessarily arrived at successively in time." Pet. App. 7a (citing *Deal*, 508 U.S. at 133 n.1). The court concluded that the adjudication of guilty at one time did not distinguish this case from *Deal*. Pet. App. 8a.

The Sixth Circuit's opinion in the present case creates a split with the Third Circuit's holding that *Deal v. United States*, 508 U.S. 129 (1993) does not control when all 924(c) convictions are entered simultaneously. Pet. App. 8a; *United States v. Couch*, 291 F.3d 251, 255 (3d Cir.2002). The Sixth Circuit's decision is also in direct conflict with this Court's holding in *Deal* that 924(c) requires "a conviction after the first conviction." *Deal*, 508 U.S. at 135. Finally, this Court should address the unanswered question of whether the rule of lenity must be applied to 924(c)(1)(C) based upon the ambiguity of the phrase "second or subsequent" when the applicable convictions are entered simultaneously by the sentencing court.

This case presents the proper vehicle for the Court to clearly define the meaning of "second" and "subsequent" in the context of 924(c) or to apply the rule lenity to said language. The Sixth Circuit reviewed the district court's application of 18 U.S.C. § 924(c) de novo (Pet. App. 4a), and Petitioner can obtain substantial relief from the improper

application of section 924(c)(1)(C). His sentence for the 924(c) convictions accounts for 282 years of his total sentence of incarceration. Furthermore, as the presented questions are important and recurring in federal prosecutions and are outcome-determinative in this case, this Court's review is warranted.

## I. The Sixth Circuit's Decision Conflicts with the Third Circuit's Holding that *Deal* Does Not Control When All § 924(c) Convictions are Entered Simultaneously.

In the present case, The Sixth Circuit found that "It is well established that the 25-year mandatory minimum sentence accompanying each 'second or subsequent' conviction applies even when the first conviction was obtained in the same proceeding." Pet. App. 6a. The circuit court concluded that the adjudication of guilty at one time did not distinguish this case from *Deal*. Pet. App. 8a. The court of appeals relied upon *Deal's* emphasis that "findings of guilt on several counts are necessarily arrived at successively in time." Pet. App. 7a (quoting *Deal*, 508 U.S. at 133 n.1).

The Third Circuit examined the identical question in *United States v. Couch*, 291 F.3d 251 (3d Cir.2002). The court found that the case fell within a "crevasse" that the *Deal* Court did not address. *Id.* at 254. Like the Sixth Circuit, the Third Circuit examined this Court's statement, "that findings of guilt on several counts are necessarily arrived at successively in time" but found that the statement was dicta. *Id.* at 255. The court of appeals took its

guidance not from footnote number one of *Deal* but from the statute itself as it found that the Supreme Court did not reach the definition of "second or subsequent" under section 924(c)(1)(C). *Id.* The court went on to hold that "'second or subsequent' is a quantitative term that references each individual conviction except for one." *Id.* Thus, under the Third Circuit's interpretation of 924(c) even where findings of guilt are entered simultaneously, 924(c)'s sentencing enhancement applies to "each individual conviction except for one." *Id.*

The Sixth Circuit and Third Circuit disagree on a key issue: whether *Deal* controls when convictions are entered simultaneously by the district court. Unlike the Sixth Circuit, The Third Circuit rejected the argument that the Supreme Court's statement that "findings of guilt on several counts are necessarily arrived at successively in time" is a statement of law. *Id.* Conversely, the Sixth Circuit's treatment of this statement implies that all findings of guilt are arrived at successively in time regardless of the sentencing procedure utilized by the sentencing court and regardless of reality. Under the Sixth Circuit's interpretation of *Deal*, factual reality is altogether ignored. This is a dangerous road to travel down for any legal system. Petitioner humbly asserts that sentencing should be based upon reality, not legal fiction.

Both circuits relied upon different reasoning to find that enhanced sentencing for a "second or subsequent" conviction applies when the convictions for all section 924(c) offenses are entered

simultaneously. The Sixth Circuit ignored reality, and both circuits disregarded important language in *Deal*. Given the conflict between the circuits, this Court should exercise Its supervisory power.

## II. Both Circuit Courts' Holdings conflict with *Deal's* Finding that § 924(c) Requires a Conviction After the First Conviction.

After carefully reviewing the text of 18 U.S.C. § 924(c), this Court found that 924(c) "requires a conviction after the first conviction." *Deal*, 508 U.S. at 135. Under the plain language of *Deal v. United States*, 508 U.S. 129 (1993), convictions entered simultaneously by the district court are not "second or subsequent" convictions under 924(c). It is undisputed that Mr. McNeal's convictions (as defined in *Deal*) were entered at one time or simultaneously. Pet. App. 6a, 7a. Petitioner requests that this Court review the decision below in order to resolve its conflict with the *Deal* decision.

In *Deal*, The Supreme Court sought to determine the meaning of the word "conviction" in the context of § 924(c).[1] It found:

> In the context of § 924(c)(1), we think it unambiguous that "conviction" refers to

---

[1]The language of 18 U.S.C. § 924(c)(1) has been amended several times since the Supreme Court's decision in *Deal*. The phrase "second or subsequent conviction" has remained unchanged.

> the finding of guilt by a judge or jury that necessarily precedes the entry of a final judgment of conviction.

*Id.* at 132. The Court explicitly stated what § 924(c) requires. "What it requires is a conviction **after** the first conviction. There is utterly no ambiguity in that, and hence no occasion to invoke the rule of lenity." *Id.* at 135 (emphasis added).

Petitioner submits that the phrase "second or subsequent conviction" does not merely mean two or more convictions. It is clear from the language used by the Supreme Court in *Deal* that the timing of a conviction is essential in triggering the enhancement. First, the Supreme Court used the word, "after." It carefully defined a "conviction" as a finding of guilt by judge or jury, and then explicitly found that the statute required a conviction "after the first conviction" to trigger the enhancement. *Id.* at 135.

Additionally, in *Deal* the Court considered the appellant's sentence after a jury trial where presumably a jury foreperson answered "guilty" or "not guilty" on each count in sequence. *See United States v. Deal*, 954 F.2d 262, 262 (5th Cir. 1992). In such a case, convictions or findings of guilt would be arrived at successively in time. Justice Scalia wrote for the majority, "Unlike a judgment on several counts, findings of guilt on several counts are necessarily arrived at successively in time." *Deal*, 508 U.S. at 133 n. 1. It is clear from Its discussion of the issue that the *Deal* Court considered the timing

of the convictions relevant and concluded that the statute required a conviction after the first to trigger the applicable enhancement.

It may be argued, that the plain language of the *Deal* opinion and 924(c) could produce anomalous results depending on the procedure used to issue findings of guilt/convictions. "The fact that 'section 924 sentences can produce anomalous results and will provide no additional deterrence... cannot defeat the plain language of the statute.'" *United States v. Andrews*, 75 F.3d 552, 558 (9th Cir. 1996), *cert. denied*, 517 U.S. 1239 (1996)(quoting *United States v. Fontanilla*, 849 F.2d 1257, 1258 (9th Cir. 1988).

This Court should accept review of this case to resolve the conflict between the Sixth Circuit's decision and the *Deal* Court's finding that 924(c) "requires a conviction after the first conviction."

## III. This Court Should Determine Whether the Rule of Lenity Applies to § 924(c) Based Upon the Ambiguity Identified in *Deal* When the Applicable Convictions are Entered Simultaneously.

Petitioner contends that the terms "second" and "subsequent" are ambiguous in the context of 924(c). This ambiguity is particularly evident when findings of guilt are entered simultaneously as they were in the petitioner's case. Thus, the rule of lenity should be applied to 924(c), and the terms "second" and "subsequent" should be construed in favor of the

petitioner to mean "next in time" rather than each conviction in excess of one. Petitioner's contention is also supported by the *Deal* Court's finding that 924(c) "requires a conviction after the first conviction." *Deal*, 508 U.S. at 135.

In addressing this question, Petitioner again directs this Court to the language of the *Deal* opinion. This Court observed:

> Petitioner also argues that the terms "second" and "subsequent" admit of at least two meanings-next in time and next in order or succession. **That ambiguity** is worth pursuing if "conviction" means "judgment," since a judgment entered once-in-time can (as here) include multiple counts. The point becomes irrelevant, however, when "conviction" means (as we hold) a finding of guilt. Unlike a judgment on several counts, findings of guilt on several counts are necessarily arrived at successively in time.

*Id.* at 133 n. 1 (emphasis added). In *Deal*, The Supreme Court identified an ambiguity in §924(c) but found it to be irrelevant given the specific situation (a trial). *See United States v. Deal*, 954 F.2d 262, 262 (5th Cir. 1992). In Petitioner's case, the findings of guilt were not arrived at successively in time, and the ambiguity, the meanings of "second" and "subsequent," is extremely relevant.

The Third Circuit also acknowledged that the phrase "second or subsequent" has two potential meanings: (1) only **next** in time, order or succession or (2) each item in a **group** in excess of one. *Couch*, 291 F.3d at 255. It should be noted that this circuit defined the words differently than *Deal* as both of *Deal*'s definitions are contained in *Couch*'s first grouping. Ultimately, this circuit decided that "second or subsequent" is a quantitative term that references each individual conviction except for one. *Id.*

Further confusion is found when one examines various references to 924(c) as a statute dealing with recidivism. In *Castillo v. United States*, 530 U.S. 120 (2000), the Court considered 924(c) as it was before the language had been amended by Congress in 1998. It stated:

> The next three sentences of § 924(c)(1) (which appear after the sentence quoted above (see Appendix, infra)) refer directly to sentencing: **the first to recidivism**, the second to concurrent sentences, the third to parole. These structural features strongly suggest that the basic job of the entire first sentence is the definition of crimes and the role of the remaining three is the description of factors (**such as recidivism**) that ordinarily pertain only to sentencing.

*Id.* at 125 (emphasis added). For our purposes, the relevant sentence is the first which according to this Court refers to recidivism. It reads:

> In the case of his **second or subsequent** conviction under this subsection, such person shall be sentenced to imprisonment for twenty years...

18 U.S.C. § 924(c)(1)(pre-1998 amendment) (emphasis added). This Court referred to the same language at issue here and connected that language to recidivism. The government has also acknowledged that this language refers to recidivist sentencing. *See* Petition for a Writ of Certiorari at 14, *United States v. O'Brien*, No. 08-1569 (filed June 23, 2009)("The prior version of Section 924(c)(1) consisted of a single paragraph comprising a lengthy, unbroken sentence describing the offense, followed by separate sentences about recidivist sentencing, probation and consecutive sentencing, and parole.") (footnote omitted).

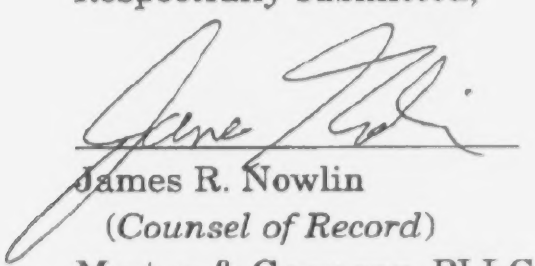
In addition, the *Deal* dissent observed that § 924(c)(1) had been treated as a recidivist statute for almost two decades, and "the long-established usage of the word 'subsequent'" was used to "distinguish between first time offenders and recidivists." *Deal*, at 138 (Stevens, J. dissenting). This Court and the government's reference to 924(c) as a recidivist statute support the contention that its text suggests more than one meaning.

If ambiguity in a criminal statute can be shown, then application of the rule of lenity is appropriate, and is not based on any perceived sentimentality for the defendant's circumstances. *Staples v. United States*, 511 U.S. 600, 619, n. 17 (1994) (rule of lenity requires that "ambiguous criminal statutes ... be construed in favor of the accused"). The rule of lenity is applicable, and the phrase "second or subsequent conviction" should be construed in Mr. McNeal's favor.

## CONCLUSION

The Court should grant this petition for a writ of certiorari to resolve the issues identified herein. On review, the Court should vacate McNeal's sentence and remand for resentencing.

Respectfully submitted,



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No. 08-6388.

**UNITED STATES COURT OF APPEALS**
**FOR THE SIXTH CIRCUIT**

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|---|---|---|
| **United States of America,** | ) | **ON APPEAL** |
| | ) | **FROM THE** |
| **Plaintiff-Appellee,** | ) | **UNITED** |
| | ) | **STATES** |
| **v.** | ) | **DISTRICT** |
| | ) | **COURT FOR** |
| **Roderick McNeal,** | ) | **THE** |
| | ) | **WESTERN** |
| **Defendant-Appellant.** | ) | **DISTRICT** |
| | ) | **OF** |
| | ) | **TENNESSEE** |

**Before: KENNEDY, MOORE, and SUTTON, Circuit Judges.**

**CORNELIA G. KENNEDY, Circuit Judge.** Defendant appeals his sentence of 290 years and 4 months of imprisonment, arguing that the district court misapplied 18 U.S.C. § 924(c) and that his sentence violates the Eighth Amendment's

prohibition on cruel and unusual punishments. Because his arguments are without merit, we AFFIRM.

## FACTUAL BACKGROUND

Between October 21, 2006, and November 15, 2006, a lone gunman later identified as the defendant committed 14 armed robberies of 11 fast food restaurants and 3 gas stations. At each place, defendant entered the business, pulled out a handgun, and demanded that the employee turn over all money in the cash registers. Defendant obtained just over $3,000 from 13 locations, and an undetermined amount from one additional place. He was apprehended shortly after he left his last target, McDonald's, on November 15, and he provided a written confession to all of the robberies.

Based on this conduct, defendant was indicted on 29 counts: 14 counts of interfering with commerce

by robbery, 18 U.S.C. § 1951, 14 counts of using a gun during a crime of violence, 18 U.S.C. § 924(c), and 1 count of being a felon in possession of a firearm, 18 U.S.C. § 922(g). He pleaded guilty to 25 counts encompassing 12 of the robberies.

The district court computed defendant's guidelines sentencing range. It determined that his base offense level was 20, USSG § 2B3.1, but increased it by 2 levels for obstruction of justice under USSG § 3C1.1 because defendant had urged his family members to pay off the victims. Under Section 3D 1.4, 5 levels were added because there were more than 5 counts. Three levels were then subtracted because the court found that defendant had accepted responsibility, giving defendant a total offense level of 24.

Defendant's criminal history began at age 8, and resulted in a criminal history score of 15, which

placed him in category VI. Without considering the mandatory minimum sentences, defendant's guideline range was 100-125 months of imprisonment. However, the district court found that defendant was subject to a mandatory minimum sentence of 282 years under 18 U.S.C. § 924(c), and sentenced him to a total of 290 years of incarceration. Defendant appeals.

## STANDARD OF REVIEW

"The district court's application of 18 U.S.C. § 924(c) is a question of law which we review de novo." *United States v. Langan,* 263 F.3d 613, 626-27 (6th Cir.2001) (citations omitted). We also review de novo whether a sentence violates the Eighth Amendment. *United States v. Caver,* 470 F.3d 220, 247 (6th Cir.2006).

## ANALYSIS

Section 924 of title 18 provides that a defendant who "during and in relation to any crime of violence or drug trafficking crime ... uses or carries a firearm" shall be sentenced to a minimum term of incarceration of seven years "if the firearm is brandished." 18 U.S.C. § 924(c)(1)(A). Armed robbery is such a crime of violence. *See United States v. Bandy*, 239 F.3d 802, 805 (6th Cir.2001). However, for each "second or subsequent conviction," the penalty increases to a minimum term of 25 years, to be served consecutively to any other term of imprisonment. 18 U.S.C. § 924(c)(1)(C)(i) & (D)(ii). The effect of this section is that every "second or subsequent conviction" for possession of a firearm during a crime of violence adds 25 years to a defendant's sentence.

It is well established that the 25-year mandatory minimum sentence accompanying each "second or subsequent" conviction applies even when the first conviction was obtained in the same proceeding. *Deal v. United States,* 508 U.S. 129, 132, 113 S.Ct. 1993, 124 L.Ed.2d 44 (1993); *United States v. Jacobs,* 244 F.3d 503, 508 (6th Cir.2001) ("The United States Supreme Court has held that even though a defendant is convicted of multiple firearm violations in the same proceeding, 18 U.S.C. § 924 imposes a five-year consecutive prison sentence for the first violation of § 924(c)(1) and an additional twenty-year consecutive prison sentence for each additional violation of § 924(c)(1)."); *see also Greenlaw v. United States,* --- U.S. ----, ----, 128 S.Ct. 2559, 2563, 171 L.Ed.2d 399 (2008); *cf. United States v. Nabors,* 901 F.2d 1351, 1358-59 (6th Cir.1990). Defendant pleaded guilty to 12 violations of section

924 at the same hearing. Under *Deal,* the mere fact that all counts were brought before the district court at the same time does not alter the application of the subsequent conviction enhancement.

Defendant tries to avoid this conclusion by arguing that his convictions on multiple counts in this instance are not "second or subsequent conviction[s]" because the district court announced its finding of guilt simultaneously for all counts. He argues that the Supreme Court held that a second or subsequent conviction must be "a *conviction* after the first conviction." *Deal,* 508 U.S. at 135 (emphasis in original). Noting that the use of the word "after" suggests separation in time, he contends that *Deal's* holding cannot be applied when all counts are adjudicated at once. However, the *Deal* court also emphasized that "findings of guilt on several counts are necessarily arrived at successively in time." *Deal,*

508 U.S. at 133 n. 1. The mere fact that a district court announces the adjudication of guilty at one time does not distinguish this case from *Deal*.

Defendant also argues that *Deal* has been limited by later cases to apply only to recidivists, citing *Castillo v. United States,* 530 U.S. 120, 125, 120 S.Ct. 2090, 147 L.Ed.2d 94 (2000). In *Castillo,* the Supreme Court determined that references in section 924(c)(1) to possession of a "machinegun" created an element of a separate crime rather than a penalty enhancement. It is true, as defendant asserts, that the *Castillo* opinion noted that the "second or subsequent" penalty is aimed at recidivism. It is also true that recidivism typically means the commission of an offense after being punished for an earlier one. *See Deal,* 508 U.S. at 138 (Stevens, J., dissenting). However, *Castillo* employed the term recidivism only tangentially. In contrast,

*Deal* squarely and clearly rejected the argument that section 924(c) applies only to recidivists as defined by the defendant. *See Deal,* 508 U.S. at 136 ("We choose to follow the language of the statute, which gives no indication that punishment of those who fail to learn the 'lesson' of prior conviction or of prior punishment is the sole purpose of § 924(c)(1), to the exclusion of other penal goals such as taking repeat offenders off the streets for especially long periods, or simply visiting society's retribution upon repeat offenders more severely.").

Finally, defendant raises a claim that his sentence of over 290 years is so grossly excessive that it constitutes cruel and unusual punishment under the Eighth Amendment. "The Supreme Court has never held that a sentence to a specific term of years, even if it might turn out to be more than the reasonable life expectancy of the defendant,

constitutes cruel and unusual punishment." *United States v. Beverly,* 369 F.3d 516, 537 (6th Cir.2004). There is no Eighth Amendment violation for imposing what is effectively a life sentence on a defendant who committed multiple robberies, and we have repeatedly affirmed such sentences. *E.g., United States v. Watkins,* 509 F.3d 277, 283 (6th Cir.2007) (holding 147 year sentence was Constitutionally permissible for defendant who committed six armed robberies); *United States v. Marks,* 209 F.3d 577, 583 (6th Cir.2000) (holding there was no Eighth Amendment violation for a sentence of over 186 years given to a defendant committed nine robberies in six months).

## CONCLUSION

Accordingly, we AFFIRM the defendant's sentence.